

Remarks:

R17 Claims 1 to 10, 12, and 13 are pending in the application.

R18 Claims 1, 3 to 10, and 12 stand rejected.

R19 Applicant thanks the Examiner for the invitation to submit an Interview Request.

Applicant finds interviews beneficial in general, and particularly so when time is saved. As a matter of professional courtesy, applicant wanted to expediently address the office action format issues mentioned in remarks R12, and R13 of applicant's 02/10/2009 submission over the telephone. Applicant considers the issue of the interview closed.

R20 Applicant notes that previous amendments submitted 02/10/2009 have been entered.

R21 Applicant notes, based on the remarks presented at point 9 of the outstanding Office Action, that applicant's previous arguments have been persuasive.

R22 Claims 1 and 10 have been amended in accordance with Examiner's requisition to amend articulated at points 7 and 8 of the outstanding Office Action. Instances of "wireless mobile station" have been amended to read --wireless device--.

R23 In response to Examiner's requisition to amend claim 12, applicant respectfully submits that the wireless mobile station recitation has sufficient antecedent basis in claim 12.

R24 It is submitted that no additional subject matter has been introduced by the amendment.

Arguments:

Double patenting objection:

A11 Applicant notes that previous arguments presented 02/10/2009 have overcome the double patenting rejection of claims 1 to 10, 12, and 13 in view of co-pending commonly assigned U.S. Patent 7,222,340.

Claims 1 to 10, 12 and 13 now stand rejected on the ground of non-statutory double patenting over U.S. Patent 7,222,340 in view of Birum and O'Neill. Applicant respectfully submits that this represents a new ground of objection.

Therefore, Applicant respectfully requests retraction of the finality of the outstanding Office Action.

A12 Claims 1 to 10, 12 and 13 stand rejected on the ground of non-statutory double patenting over U.S. Patent 7,222,340 in view of Birum and O'Neill. Applicant respectfully disagrees.

a) Based on Examiner's articulated arguments at page 4 of the outstanding Office Action, Examiner identifies, in bold, at least one claim element, namely "sending said software identifier along with an identifier indicating a carrier company associated with the wireless mobile station to said network", as not described in, taught in or obvious over U.S. Patent 7,222,340. Applicant also notes that at pages 11, 14, 20 and 23 of the outstanding Office Action, Examiner states that Birum does not describe or teach sending software and carrier company identifiers over a network.

Therefore, based on the Examiner's articulated remarks, applicant respectfully submits

that Birum is not relevant.

b) In paragraphs 2 and 3 on page 10 of the outstanding Office Action, Examiner contends that O'Neill teaches "sending a software identifier identifying a carrier telecommunications company associated with the wireless mobile station to said network".

Applicant respectfully submits that a "software identifier identifying a carrier telecommunications company" is not claimed.

If, as Examiner contends, O'Neill teaches "sending a software identifier identifying a carrier telecommunications company" then O'Neill teaches away from the claimed invention.

Furthermore, Applicant respectfully submits that, O'Neill does not describe or teach a carrier company identifier.

Applicant has reviewed the passages quoted by the Examiner. Applicant respectfully submits that paragraph [0037] relates to a distribution environment while paragraph [0047] relates to a generation environment. Paragraph [0031] defines both environments:

"... The generation environment 111 may comprise one or more computing devices and application software capable of generating one or more software updates for one or more types of wireless communication devices 109. The distribution environment 107 comprises a network such as a client server network or the like that is capable of storing and transmitting software updates to one or more wireless communication devices 109. ..."

Based on the definitions of the generation environment and the distribution environment, the generation environment is not the distribution environment. Applicant respectfully submits that if the generation environment is owned and operated by a carrier and if the wireless

communication device in O'Neill only communicates with the distribution environment, the

description in O'Neill is insufficient to describe "a wireless mobile station sending a software identifier and an identifier identifying a carrier telecommunications company associated with the wireless device to [a] network".

c) Examiner further opines that the make and model inherently indicates a carrier.

Application respectfully disagrees. For example, for the Research In Motion Blackberry Curve 8900, the make is RIM, the model is Blackberry Curve 8900. The Blackberry Curve 8900 is supported in the U.S. by AT&T and T-Mobile, in UK by BT, O2 UK, T-Mobile UK, and Vodafone UK, and Ireland by O2 Ireland and Vodafone Ireland. Therefore, the make and model is insufficient to identify the carrier.

Therefore, applicant respectfully submits that a *prima facie* case of double patenting has not been established in respect of claims 1 to 10, 12 and 13 by failure to produce prior art teaching of each and every element and step claimed.

Obviousness objection:

A13 Claims 1, 3 to 10 and 12 stand rejected under 35 U.S.C. §103(a) as unpatentable over Birum in view of O'Neill. Applicant respectfully disagrees.

Independent claims 1, 10 and 12 relate to the sending of a software identifier along with an identifier indicating a carrier company associated with the wireless device to a network, and to a wireless mobile station sending same.

Birum does not describe sending an identifier indicating a carrier company associated

with the wireless device as stated by the Examiner on pages 14(bottom) and 20(middle) of the outstanding Office Action. Applicant respectfully submits that O'Neill does not cure the deficiency:

a) With respect to claim 12, Examiner contends that O'Neill teaches "sending a software identifier identifying a carrier telecommunications company associated with the wireless mobile station to said network". Applicant respectfully submits that a "software identifier identifying a carrier telecommunications company" is not claimed. If, as Examiner contends, O'Neill teaches "sending a software identifier identifying a carrier telecommunications company" then O'Neill teaches away from the claimed invention.

b) Applicant respectfully submits that, O'Neill does not describe or teach a carrier company identifier.

Applicant has reviewed the passages quoted by the Examiner. Applicant respectfully submits that paragraph [0037] relates to a distribution environment while paragraph [0047] relates to a generation environment. Paragraph [0031] defines both environments:

"... The generation environment 111 may comprise one or more computing devices and application software capable of generating one or more software updates for one or more types of wireless communication devices 109. The distribution environment 107 comprises a network such as a client server network or the like that is capable of storing and transmitting software updates to one or more wireless communication devices 109. ..."

Based on the definitions of the generation environment and the distribution environment, the

generation environment is not the distribution environment. Applicant respectfully submits that if the generation environment is owned and operated by a carrier and if the wireless communication device in O'Neill only communicates with the distribution environment, the description in O'Neill is insufficient to describe "a wireless device sending a software identifier and an identifier identifying a carrier telecommunications company associated with the wireless device to [a] network".

c) Applicant respectfully submits that what a wireless communications device sends is described by O'Neill in paragraphs [0037], [0041], [0042] and [0043] neither of which describe "sending a software identifier and an identifier identifying a carrier telecommunications company associated with the wireless device to [a] network".

d) Examiner further opines that the make and model inherently indicates a carrier.

For the reasons submitted above, the Applicant respectfully submits that the make and model is insufficient to identify a carrier.

Therefore, applicant respectfully submits that a *prima facie* case of obviousness has not been established in respect of claims 1, 3 to 10 and 12 by failure to produce prior art teaching of each and every element and step claimed.

and Moore. Applicant respectfully disagrees.

Dependent claims 2 and 13 respectively depend directly from independent claims 1 and 12 and therefore incorporate all respective limitations of independent claims 1 and 12. The articulated rejection relies on the teachings of Birum and O'Neill. Moore does not cure the deficiency in Birum and O'Neil with respect to sending an identifier indicating a carrier company associated with the wireless device.

Applicant respectfully submits that a *prima facie* case of obviousness in respect of dependent claims 2 and 13 has not been established.

A16 In *In re Oetiker*, 977, F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992), the Federal Circuit stated that “[i]f the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.”

Applicant respectfully submits that the above arguments raise questions regarding the establishment of a *prima facie* case of unpatentability.

Reconsideration and allowance are respectfully requested.

Respectfully submitted,



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